

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 99-0511**  
**Sales and Use Tax**  
**For The Tax Period 1989-1998**

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**ISSUES**

**I. Sales and Use Tax - Imposition**

**Authority:** IC 6-2.5-2-1, IC 6-2.5-3-2 (a), IC 6-2.5-2 (c)(1), IC 6-8.1-5-1 (b), IC 6-8.1-5-4.

The taxpayer protests the assessment of sales and use tax.

**II. Tax Administration – Fraud Penalty**

**Authority:** IC 6-8.1-10-4 (a), 45 IAC 15-11-4.

The taxpayer protests the imposition of the fraud penalty.

**STATEMENT OF FACTS**

The taxpayer is the sole proprietor and operator of a body repair shop. In addition to revenue from repairing cars, taxpayer also purchases wrecked vehicles to repair and repaint. He then sells the repaired cars on a consignment basis from a local car lot. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty. The taxpayer protested a portion of the sales tax assessment and the penalty. A hearing was held and this Letter of Findings results.

**1. Sales and Use Tax -Imposition**

**DISCUSSION**

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC 6-2.5-2-1. Indiana imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. IC 6-2.5-3-2 (a). Payment of sales tax at the time of purchase exempts the use of tangible personal property from the use tax. IC 6-2.5-2(c)(1).

Pursuant to IC 6-8.1-5-1(b), all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. Taxpayers have a statutory duty to keep records as set out at IC 6-8.1-5-4 as follows:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

The taxpayer did not submit any documentation to substantiate his claim that the department's assessment was inaccurate. Therefore, the taxpayer did not sustain his burden of proof.

### **FINDING**

The taxpayer's protests to the assessments of sales and use tax are denied.

## **II. Tax Administration – Fraud Penalty**

### **DISCUSSION**

The department assessed the one hundred percent (100%) fraud penalty pursuant to the provisions of IC 6-8.1-10-4 (a) as follows:

If a person fails to file a return or to make a full tax payment with that return with the fraudulent intent of evading the tax, the person is subject to a penalty.

This penalty is further explained at 45 IAC 15-11-4 as follows:

The penalty for failure to file a return or to make full payment with that return with the fraudulent intent of evading the tax is one hundred percent (100%) of the tax owing. Fraudulent intent encompasses the making of a misrepresentation of a material fact which is known to be false, or believed not to be true in order to evade taxes. Negligence, whether slight or great, is not equivalent to the intent required. An act is fraudulent if it is an actual, intentional wrongdoing, and the intent required is the specific purpose of evading tax believed to be owing.

The taxpayer was registered to collect sales tax and collected it from most customers. He never, however, filed sales tax returns with the department or voluntarily remitted collected sales taxes. The taxpayer admitted that he "borrows" other dealers' identification numbers. He also deals in "cash only" sales and purchases without recording any transactions. The taxpayer acknowledged that he destroyed purchase invoices. The business records were poorly kept and minimal. The taxpayer clearly knew that he was required to collect and remit sales taxes but failed to do so. The taxpayer intentionally misrepresented to the state the amount of sales taxes that he was required to remit to the state. These actions constitute fraud.

### **FINDING**

The taxpayer's protest is denied.